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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,551	09/30/2003	Edward J. Cavenagh	83378-702 ADB	6470
23529	7590	10/14/2005	EXAMINER	
			PIZIALI, ANDREW T	
		ART UNIT		PAPER NUMBER
				1771

DATE MAILED: 10/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/673,551	CAVENAGH, EDWARD J.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Andrew T. Piziali	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 06 September 2005.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-12, 14, 16, 17 and 19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-12, 14, 16, 17 and 19 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 02 February 2004 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

## **DETAILED ACTION**

### ***Response to Amendment***

1. The amendment filed on 9/6/2005 has been entered. The examiner has withdrawn the objection to claim 5 based on the amendment to claim 5. The examiner has withdrawn the rejections of claims 13, 15 and 18 based on the cancellation of claims 13, 15 and 18. Applicant's amendment necessitated the new grounds of rejection presented in this Office action.

### ***Election/Restrictions***

2. Applicant's election of Group I, claims 1-19, in the reply filed on 9/6/2005, is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1 and 3-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,902,070 to Bradley in view of any one of USPN 4,610,028 to Nattrass or USPN 4,874,258 to Marino.

Regarding claims 1 and 3-12, Bradley discloses a form for receiving and containing a settable filler material while the material sets comprising: a tubular wall formed of a flexible woven polymer fabric having a first annular end edge at a first end and a second annular end

edge at a second end; at least one filler opening into the form for receiving the filler material; wherein the tubular wall is formed from a strip of the fabric which is arranged helically such that one side edge of the strip is stitched to an opposed side edge of a next turn of the strip to define a stitched seam which extends helically of the tubular wall from one end panel to the opposite end panel (see entire document including column 3, lines 16-54, column 6, lines 1-10, column 10, lines 14-26 and Figures 5, 6, 10 and 12).

Bradley discloses that the ends may be sewn (column 4, lines 20-25), but Bradley does not appear to mention forming the end panels as circular end panels stitched around the circular peripheral edge to a respective one of the first and second end edges of the tubular wall. Nattrass and Marino each discloses that it is known in the flexible bulk bag art to form end panels by stitching separate end panels around the peripheral edge to a respective one of the first and second end edges of the bag wall (see entire documents including column 4, lines 25-34 and column 5, lines 1-9 of Nattrass and column 3, lines 4-17 of Marino). Nattrass even discloses that it is known in the flexible bulk bag art to use the disclosed end panels to replace, or in combination with, the end panel construction disclosed Bradley (see column 5, lines 1-9 of Nattrass). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the end panels from any suitable end panel construction, such as the disclosed end panels of Nattrass or Marino, with or without the end panel construction disclosed by Bradley, because the end panels would provide the bag with sufficient strength to carry bulk materials and because it is within the general skill of a worker in the art to select a known end panel construction on the basis of its suitability and desired characteristics such as strength.

Regarding claim 3, Bradley discloses that the fabric strip may extend in at least one turn of helix (Figure 6).

Regarding claims 4 and 7, Bradley discloses that a filler opening(s) may be provided based on the intended application (column 9, lines 5-12). Bradley illustrates a filler opening in an end panel (Figures 11A, 11B, 11C and 12) and filler openings in the tubular wall (Figures 10, 11A, 11B and 11C). In addition, Nattrass and Marino each discloses that it is known in the flexible bulk bag art to put opening in the end panels (see Figure 4 of Nattrass and Figure 1 of Marino).

Regarding claim 5, the strip of Bradley appears to lie at an angle of the order of 45 degrees relative to a line transverse to the longitudinal to the axis of the tubular member (see Figures 5-7, 10, 12 and/or 15).

Regarding claims 6 and 7, Bradley does not appear to mention support straps, but Nattrass and Marino each discloses that it is known in the flexible bulk bag art to add support straps adjacent one end panel for handling purposes and/or for securing/fastening of the form during installation and/or use (see entire documents including Figures 2 and 3 of Nattrass and column 3, lines 17-28 of Marino). It would have been obvious to one having ordinary skill in the art at the time the invention was made to add support straps adjacent one end panel, because the support straps can be used for improved handling and/or for securing/fastening of the form during installation and/or use.

Regarding claim 8, Bradley discloses that the tubular wall and end panels may each consist of a single layer of fabric (column 3, lines 42-54).

Regarding claim 9, Bradley discloses that the tubular wall and the end panels may be stitched together with stitched seams on the outside of the form (column 12, lines 7-29 and Figures 6 and 7).

Regarding claim 10, Bradley discloses that the tubular wall and the end panels may be stitched together with simple overlapping seams (column 3, lines 28-33).

Regarding claim 11, Bradley discloses that the flexible fabric may be polypropylene woven fabric (column 6, lines 1-11).

Regarding claim 12, Bradley discloses that the flexible woven fabric may be substantially imperforate (column 3, lines 20-22).

5. Claims 2, 14, 16-17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,902,070 to Bradley in view of any one of USPN 4,610,028 to Nattrass or USPN 4,874,258 to Marino as applied to claims 1 and 3-12 above, and further in view of any one USPN 6,171,533 to Adams et al. (hereinafter referred to as Adams) or USPN 6,139,482 to Lafleur.

Regarding claims 2, 14, 16-17 and 19, Bradley discloses that the fabric may be a single layer of fabric, which may have an inner liner (column 3, lines 42-62 and column 10, lines 43-56), but Bradley does not appear to specifically mention a metal foil layer in combination with the woven polymer layer. Adams and Lafleur each discloses that it is known in the bulk bag art to use a metal foil layer in combination with a woven polymer layer to form a liquid tight barrier (see column 2, lines 28-37 and column 5, lines 8-13 of Adams and column 1, lines 10-40 of Lafleur). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the wall and end panels from any suitable material, such as a woven polymer fabric laminated with a metal foil, because the bag would not be susceptible to water

damage and because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability.

Regarding claim 16, Bradley discloses that a filler opening(s) may be provided based on the intended application (column 9, lines 5-12). Bradley illustrates a filler opening in an end panel (Figures 11A, 11B, 11C and 12) and filler openings in the tubular wall (Figures 10, 11A, 11B and 11C). In addition, Nattrass and Marino each discloses that it is known in the flexible bulk bag art to put opening in the end panels (see Figure 4 of Nattrass and Figure 1 of Marino).

Regarding claim 17, Bradley does not appear to mention support straps, but Nattrass and Marino each discloses that it is known in the flexible bulk bag art to add support straps adjacent one end panel for handling purposes and/or for securing/fastening of the form during installation and/or use (see entire documents including Figures 2 and 3 of Nattrass and column 3, lines 17-28 of Marino). It would have been obvious to one having ordinary skill in the art at the time the invention was made to add support straps adjacent one end panel, because the support straps can be used for improved handling and/or for securing/fastening of the form during installation and/or use.

Regarding claim 19, Bradley discloses that the tubular wall and the end panels may be stitched together with stitched seams on the outside of the form (column 12, lines 7-29 and Figures 6 and 7).

6. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,902,070 to Bradley in view of any one of USPN 4,610,028 to Nattrass or USPN 4,874,258 to Marino as applied to claims 1 and 3-12 above, and further in view of USPN 5,232,429 to Cizek et al. (hereinafter referred to as Cizek).

Bradley does not appear to mention support straps, but Cizek discloses that it is known in the art to add support straps for handling purposes and/or for securing/fastening of the form during installation and/or use (see entire document including column 2, lines 35-44 and column 10, lines 20-34). It would have been obvious to one having ordinary skill in the art at the time the invention was made to add support straps in any suitable location based on the intended application and because the support straps can be used for improved handling and/or for securing/fastening of the form during installation and/or use.

7. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,902,070 to Bradley in view of any one of USPN 4,610,028 to Nattrass or USPN 4,874,258 to Marino in view of any one of USPN 6,171,533 to Adams or USPN 6,139,482 to Lafleur as applied to claims 2, 14, 16-17 and 19 above, and further in view of USPN 5,232,429 to Cizek.

Bradley does not mention support straps, but Cizek discloses that it is known in the art to add support straps for handling purposes and/or for securing/fastening of the form during installation and/or use (see entire document including column 2, lines 35-44 and column 10, lines 20-34). It would have been obvious to one having ordinary skill in the art at the time the invention was made to add support straps in any suitable location based on the intended application and because the support straps can be used for improved handling and/or for securing/fastening of the form during installation and/or use.

***Response to Arguments***

8. Applicant's arguments have been considered but are mostly moot in view of the new grounds of rejection.

Regarding claims 2, 14, 16-17 and 19, the applicant asserts that if one were to combine the structure of Adams with the structure of Bradley, one would utilize the tubular material of Adams including all of the layers to replace the material of Bradley. The examiner respectfully disagrees. Adams discloses that it is known in the container art to use a metal foil layer in combination with a woven polymer layer to form a liquid tight barrier (see column 2, lines 28-37 and column 5, lines 8-13). It is not necessary to include all of the layers taught by Adams. Lafleur has also been cited to further show that it is known in the bulk bag art to use a metal foil layer in combination with a woven polymer layer to form a liquid tight barrier (column 1, lines 10-40 of Lafleur).

***Conclusion***

9. The following patents are cited to further show the state of the art with respect to bags with end panels formed by stitching around the peripheral edge to a respective one of the first and second end edges of the wall:

USPN 3,903,944 to Montgomery et al.

USPN 3,955,727 to Montgomery

USPN 4,261,490 to Schwartzstein

USPN 4,344,781 to Higgins et al.

USPN 4,808,033 to Belmonte

USPN 5,287,903 to Ambasz

10. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew T. Piziali whose telephone number is (571) 272-1541. The examiner can normally be reached on Monday-Friday (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

atp

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